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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

Single Bench : Hon'ble Shri Justice Satish K. Agnihotri

WRIT PETITION NO. 820 OF 2003

Upendra Kumar Deshmukh

Vs.

State of Chhattisgarh & Others

ORDER

Post for 9-04-2007

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

Single Bench : Hon'ble Shri Justice Satish K. Agnihotri

WRIT PETITION NO. 820 OF 2003

Petitioner

Upendra Kumar Deshmukh, S/o Late Uderam Deshmukh, aged about 45 years, Assistant Training Officer, Hindi Stenography (Woman) Mahila I.T.I. Narayanpur, District Bastar (CG). Head Office Jagdalpur, R/o Village Belodi, Post Bhedsar, Tahsil Durg (CG).

Versus

Respondents

1. State of Chhattisgarh, Through Principal Secretary, General Administration Department, Govt. of Chhattisgarh, D.K. Bhawan, G.E. Road, Raipur (CG).
2. Commissioner, Scheduled Tribes, Scheduled Caste, Backward Class and Minority Welfare Department, Govt. of Chhattisgarh, D.K.S. Bhawan, G.E. Road, Raipur (CG).
3. The Collector (Tribal Development Branch) District Bastar, Jagdalpur (CG).
4. Superintendent, Mahila (Women) Industrial Training Institute, Narayanpur, District Bastar (CG).

Present :- Shri V.G. Tamaskar, counsel for the petitioner.

Miss Deepali Pandey, Panel Lawyer for the State.

ORDER

(Delivered on 9th April, 2007)

By this petition under Article 226/227 of the Constitution of India, the petitioner seeks a direction to the respondents either to regularize or appoint him against the clear vacancy of Assistant Training Officer,

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Hindi Stenography in Mahila (Women) Industrial Training Institute, Narayanpur, District Bastar (CG).

2) The facts in nutshell, according to the learned counsel for the petitioner, are that the petitioner by orders dated 31-5-1995, 3-4-1996, 23-12-1995, 28-8-1995, 3-1-1997, 16-11-1996, 26-2-1997, 22-4-1997, 4-6-1997, 25-6-1997, 4-6-1997, 1-11-1997, 12-2-1998, 8-6-1998, 10-9-1998, 15-1-1999, 1-6-1999 was appointed on daily wages basis for 89 days at one time. Thereafter, he was appointed on ad-hoc basis vide order dated 21-12-1999 (Annexure-P/1) and the same was extended from time to time e.g. 31-1-2000, 6-5-2000, 6-6-2000, 19-9-2000 and 10-11-2000. The State Government vide circular No.320/GAD/2000 dated 2-12-2000 (Annexure-P/2) directed all the Head of the Departments, Divisional Commissioners, District Collectors to appoint all the daily wagers, who were earlier removed from service, keeping in view of the requirement in each district at Collector's rate. Some of the persons were accordingly appointed as class-IV employees on daily wages basis. The petitioner is working as ad hoc employee in class-III category as Assistant Training Officer, Hindi Stenography in Mahila (Women) Industrial Training Institute, Narayanpur, District Bastar. The respondent No.2 is the competent authority to regularize ad hoc employees working on daily wages basis.

3) According to the learned counsel for the petitioner, the Collector, District Bastar, recommended the name of the petitioner vide letter dated 21-8-2001 (Annexure-P/4) for regularization. The petitioner has also made several representations; the last one was made on

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25-9-2002 (Annexure-P/5). The services of the petitioner could not be regularized. The petitioner claims parity on the ground that other similarly situated employees have been regularized in the past. Thus, this petition.

4) It is trite law that the appointment made on daily wages basis or on ad-hoc basis is contrary to the constitutional scheme of employment. The employee does not acquire any right as the appointment itself is unconstitutional, not based on open competition by inviting all the eligible candidates. It would be improper for the Court to give directions for regularization of daily wagers, ad-hoc employees, probationers, temporary or on contractual basis employees.

5) This aspect of the matter has been dealt with by the Constitution Bench of the Supreme Court in the case of **Secretary, State of Karnataka and others vs. Umadevi (3) and others**[1]. In para 45 of the said decision it has observed as under :

> "45. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining

[1] (2006) 4 SCC 1

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> power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (*sic*) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution."

6) In the case of **Surinder Prasad Tiwari vs. U.P. Rajya Krishi Utpadan Mandi Parishad and others**[2] Supreme Court observed as under :

> "**37.** Our constitutional scheme clearly envisages equality of opportunity in public employment. The Founding Fathers of the Constitution intended that no one should be denied opportunity of being considered for public employment on the ground of sex, caste, place of birth, residence and religion. This part of the constitutional scheme clearly reflects strong desire and constitutional philosophy to implement the principle of equality in the true sense in the matter of public employment.

[2] (2006) 7 SCC 684

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> **38.** In view of the clear and unambiguous constitutional scheme, the courts cannot countenance appointments to public office which have been made against the constitutional scheme. In the backdrop of constitutional philosophy, it would be improper for the courts to give directions for regularization of services of the person who is working either as daily-wager, *ad hoc* employee, probationer, temporary or contractual employee, not appointed following the procedure laid down under Articles 14, 16 and 309 of the Constitution. In our constitutional scheme, there is no room for back door entry in the matter of public employment."

7) In view of the clear enunciation of law laid down by the Hon'ble Supreme Court in various cases, no writ of mandamus or direction can be issued to the respondents to grant regularization or appointment as prayed for by the petitioner in his petition. Regularization of other employees cannot be a ground for grant of regularization in the teeth of settled position of law.

8) As a result and for the reasons made hereinabove, the petition deserves to be dismissed and is accordingly dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Gowri